

ORIGINAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	Motion to Stay
)	
Plaintiff,)	
)	
vs.)	NO. C 20-05640 YGR
)	
APPLE, INC.,)	Pages 1 - 24
)	
Defendant.)	Oakland, California
)	Tuesday, November 9, 2021

REPORTER'S TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS

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1 Tuesday, November 9, 2021

1:57 p.m.

2 P R O C E E D I N G S

3 (Zoom Webinar)

4 **THE CLERK:** Calling civil action 20-5640, Epic, Inc.
5 versus Apple, Inc.

6 Counsel, please state your appearances.

7 **MR. BORNSTEIN:** Good afternoon, Your Honor. Gary
8 Bornstein for plaintiff Epic Games.

9 **THE COURT:** Good afternoon, Mr. Bornstein.

10 **MR. PERRY:** Good afternoon, Your Honor. Mark Perry
11 for Apple.

12 **THE COURT:** All right. Good afternoon.

13 Okay. Today's motion relates to Apple's motion to stay
14 the injunction pending appeal.

15 Mr. Perry, I'm not inclined to grant your motion, but I'll
16 go ahead and we'll go through the elements. I'll hear any
17 arguments you both want to make in addition to the papers, and
18 then I'll get an order out pretty quickly.

19 **MR. PERRY:** Thank you, Your Honor.

20 **THE COURT:** So there are -- as you know, there are
21 four elements. The first is the likelihood of success on the
22 merits.

23 What, if anything, do you want to say in addition to your
24 papers, Mr. Perry?

25 **MR. PERRY:** Your Honor, I will submit on the papers

1 as to that with one point I would like to stress.

2 The court said three times that subscriptions are not part
3 of this case. In fact, Footnote 194 says subscriptions are
4 not part of this action. And the only evidence regarding
5 steering came from two subscription app providers, Down Dog
6 and Match Group.

7 You know, whether or not a full -- quote, unquote, full
8 market definition analysis is required or something less, an
9 incipient antitrust violation requires a showing of
10 anti-competitive effects in a market that is relevant to the
11 plaintiff.

12 And there are significant differences between games and
13 subscriptions. Games rely on impulse, in-app purchases. Epic
14 admitted that its complaint, paragraph 116. In fact when they
15 said developers games --

16 **THE COURT:** Mr. Perry.

17 **MR. PERRY:** Yes, Your Honor.

18 **THE COURT:** We're not in the courtroom, so you can't
19 see that the court reporter is probably having a difficult
20 time keeping up with you. If you'd slow down a little.

21 **MR. PERRY:** I need to pull up my post-it note, Your
22 Honor, that says "slow down." I apologize to both of you.

23 The subscription providers, Down Dog, for example, offer
24 different prices on their app. The Down Dog fellow testified
25 that they offered a discount on the -- on the web not

1 available on the app.

2 Epic, on the other hand, offers the same price on all
3 platforms to avoid V-Bucks arbitrage. They don't have the
4 same monetization model as subscriptions. They don't have the
5 same injury, if any.

6 So even if there were injury to subscription apps from the
7 steering provisions, they are not part of this case. The
8 court said that three times. And they are not part of the
9 market the court defined for this case, and they're certainly
10 not part of the market in which Epic Games participants.

11 So, again, we've said that in the papers. I just wanted
12 to elaborate on that point in particular.

13 And on the rest of the likelihood of success, unless the
14 court has questions, I don't want to re-argue the case. I
15 think our position is fairly clear. The standing and the
16 scope of the injunction also are significant problems for
17 Epic.

18 **THE COURT:** Mr. Bornstein?

19 **MR. BORNSTEIN:** Your Honor, given your comments, I
20 don't want take -- take much time. I'll just point out that
21 the market-related argument that Mr. Perry made relates only
22 to the tethering test under the unfair prong of the UCL.

23 The court obviously also reached a conclusion under the
24 balancing test as to which that argument is not applicable.

25 In addition to that, under the tethering test, as we

1 pointed out in the papers, there are numerous cases, including
2 the *LegalForce* case from -- from Your Honor that do not go
3 through a detailed Sherman Act-style market definition process
4 before reaching a conclusion about unfairness under even the
5 tethering test.

6 **THE COURT:** You know, I didn't see that you cited to
7 any cases on the standing issue, that someone can have
8 standing throughout the entire case and then somehow lose it
9 after the fact.

10 You know -- Mr. Perry, do you have any comments on that
11 front?

12 **MR. PERRY:** Well, sure, Your Honor.

13 *Arizonans for Official English* holds that. They lost
14 standing before they got to the Supreme Court. They had
15 standing in the lower court.

16 There are many cases where a party loses standing along
17 the way. In fact, the Supreme Court said in *Lujan* that a
18 party has to have standing at every stage of the proceedings,
19 the complaint, the trial, and the appeal. And if something
20 happens along the way, new legislation or something else, that
21 deprives a party of standing, that must be taken into account,
22 particularly with respect to prospective relief, because
23 the -- the inability of a court to render a judgment that
24 redresses an injury to the plaintiff is a limitation of
25 Article III. This is not a statutory issue. This is not a

1 prudential issue. This is a constitutional constraint on the
2 court's power.

3 And Epic, having been removed -- Epic Games, Inc. having
4 been removed from the App Store from the developer program
5 with no live apps and with possibility of applying for
6 reinstatement until this lawsuit is over cannot benefit from
7 this injunction. It -- whether or not it ever approved
8 harm -- and we don't think it ever did -- but it cannot
9 benefit from the injunction going forward because it has no
10 apps on the store, and it will have no apps on the store for
11 the foreseeable future.

12 So if it ever had standing, a debatable proposition on
13 this point, it certainly does not now and this is, you know,
14 new information that came to light in light of the court's
15 declaratory judgment, a judgment to which Epic stipulated, and
16 the actions Apple took to enforce that judgment and the
17 underlying contract in light of the conduct proven at trial.

18 **THE COURT:** Mr. Bornstein.

19 **MR. BORNSTEIN:** Thank you, Your Honor.

20 I think we've addressed -- unless Your Honor has
21 questions, we've addressed adequately the gamesmanship aspect
22 of the standing argument in which Apple is engaging here.

23 I'll just take the opportunity barring any other questions
24 from the court to address two points that were in the reply
25 brief that we hadn't had the opportunity previously to respond

1 to.

2 The -- the first one is there -- there is a statement in
3 the reply brief that Epic Games, Inc., the plaintiff in this
4 case, does not earn any royalties from the Unreal Engine.
5 That is incorrect. There is evidence in the record. It's
6 DX4022. It is the form license agreement for the Unreal
7 Engine. And then the first page, the third paragraph makes
8 clear that for entities that are licensees who are domestic in
9 the United States, the counter-party to that agreement is Epic
10 Games, Inc., the plaintiff here in this case.

11 So that's just a misstatement in the reply brief that I
12 wanted to be sure was corrected because I think it addresses
13 the technical point that -- that they're attempting to make.

14 The other point I would address is a -- a misstatement of
15 one of the cases in the reply brief. We cited Your Honor to
16 the *Franchise Tax Board* case from the Supreme Court, which
17 discussed Article III standing of a parent corporation when
18 there is harm to the subsidiary. And the court in two
19 paragraphs very succinctly addresses that point and finds that
20 there is Article III standing in that circumstance.

21 In its reply brief, Apple points to a different part of
22 that case that discussed the separate issue of prudential
23 standing, which the Supreme Court said it did not need to
24 resolve.

25 But all that Apple has argued here in both its and opening

1 its reply brief is an absence of Article III standing, and the
2 *Franchise Tax Board* case does, in fact, take that on directly.
3 The prudential standing issue, to which Apple refers in its
4 reply is -- is a different point.

5 **MR. PERRY:** May I respond briefly to that, Your
6 Honor?

7 **THE COURT:** You may.

8 **MR. PERRY:** Thank you.

9 For once today Mr. Bornstein and I will agree. He's
10 correct. That's what *Franchise Tax Board* has both parts, and
11 we cited the prudential standing. And I apologize. I
12 realized that -- re-reading the case for this purpose.

13 However, on the Article III point, the court found that
14 the parent had Article III standing to enforce the rights of
15 the subsidiary because there was evidence that the economic
16 consequences of the tax regime flowed through the subsidiary
17 to affect the parent.

18 In other words, there -- there was actual injury to the
19 parent and the fact that a subsidiary was involved was not
20 preclusive of standing.

21 Here, in this case, we had a trial. And the court heard a
22 little bit of evidence about the Epic Games, Inc. subsidiaries
23 and their apps, but there was no evidence that any of those
24 subsidiaries has ever been harmed by the steering provisions.

25 In fact, there was no discussion of the steering

1 provisions in connection with any of those subsidiaries.

2 There was also no financial information regarding the
3 ownership interest, pass-through rights, sharing of revenues
4 and profits, if any. And we don't have any idea -- because
5 this is private company, of course, there's no SEC filings or
6 other things to look at -- what financial arrangements, if
7 any.

8 So Mr. Bornstein points to subsidiaries, and licensees for
9 that matter, but has not proven any harm to those entities,
10 much less any evidence that that harm could, did, or would, or
11 should flow through the Epic Games, Inc., which was their
12 burden at trial.

13 **THE COURT:** Mr. Bornstein?

14 **MR. BORNSTEIN:** Yes, Your Honor.

15 I think it's important to focus on the harm that Your
16 Honor found in the opinion which, applied not just to the Epic
17 subsidiaries, not just to Epic Games itself, through the
18 Unreal Engine license that I just discussed, but to other apps
19 as well. And that harm is the super-competitive commissions
20 that result from the unfair anti-steering provisions that are
21 at issue on this injunction.

22 That harm applies to everybody who paid a commission using
23 the IAP system when consumers did not have sufficient
24 information to make a choice about an alternative platform.

25 **THE COURT:** Okay. Shall we move on?

1 The next element is irreparable injury absent a stay.

2 Mr. Perry?

3 **MR. PERRY:** Thank you, Your Honor.

4 I would like to focus the court's attention on
5 Mr. Kosmynka's declaration. The court heard, of course, from
6 Mr. Kosmynka at trial. Mr. Kosmynka, the head of app review,
7 explained in significant detail the many harms that Apple
8 would suffer from a precipitous implementation of the second
9 half of the injunction.

10 I should have said at the outset we have complied with the
11 first half of the injunction. We have made that change. That
12 was part of the *Cameron* settlement. That is -- it's already
13 done, so we're only talking about the in-app purchase part of
14 the injunction, the in-app messaging.

15 Mr. Kosmynka testifies in paragraph 10 of his declaration
16 that without thoughtful restrictions in place, quote, changing
17 Guideline 3.1, will harm users, developers, and the iOS
18 platform more generally, end quote.

19 "Will harm." That -- that is evidence that we have put in
20 that Epic has not disputed. They have said that it's
21 conclusory, but it's not.

22 Mr. Kosmynka goes on for many paragraphs. In paragraph
23 16, he explains that this change would upset the integrity of
24 two-sided transaction platform by lowering user confidence and
25 that developers will suffer as well. These are harms in a

1 platform situation to Apple because the platform provider has
2 to balance the interests on both side [sic] of the platform.

3 Mr. Kosmynka testifies, second, in paragraphs 12 and 13 of
4 his injunction that it would interfere with Apple's ability to
5 enforce the IAP requirement and to collect its commission.

6 Harm -- issues that this court found at page 150 of the
7 opinion were legitimate business objectives of Apple that it
8 was entitled to enforce in light of, among other things, its
9 intellectual property rights.

10 Third, Mr. Kosmynka testifies in paragraphs 14 and 18 of
11 his declaration, that it would interfere with Apple's ability
12 to provide services to consumers, such as parental controls
13 and family sharing and to prevent fraudulent transactions.
14 That is, harm to consumers is harm to Apple.

15 Fourth, Mr. Kosmynka testifies in paragraph 15, that links
16 and buttons in particular, mechanisms as opposed to
17 information, would introduce new and hitherto unknown security
18 and privacy risks into the iOS ecosystem.

19 These have never been allowed for digital content. And
20 allowing them would -- would permit bad actors to hijack the
21 links, to take children and other users to places that none of
22 us wants them to be, to steal their money, to steal their
23 data, and to perform other bad acts.

24 It takes taking somebody from within an app, Apple's
25 property, outside into the wide world without controls without

1 restrictions, which is what Mr. Sweeney and Epic want.

2 Mr. Sweeney said that in -- in his statement to Mr. Schiller's
3 Exhibit C to my declaration.

4 There's a whole new world, that there's no evidence on
5 this at trial on buttons and links as opposed to information.
6 There was no evidence at trial, no evidence of the harm, no
7 evidence of the risks. And Mr. Kosmynka explains that in
8 significant detail.

9 And, fifth, related to all of these, Mr. Kosmynka
10 testifies in paragraph 18 that it would require, quote,
11 substantial engineering and other changes to the App Store, to
12 app review and its tools, and to all of the platforms and
13 devices that interact with and rely upon the App Store to
14 unfectuate [phonetic] these changes, if they were even
15 possible.

16 And he explains further, Your Honor, and I think this is
17 very important, that Apple is actively investigating these
18 issues. This is paragraph 17. We are not sitting silent. We
19 have already implemented half of the injunction, as I said,
20 and we are exploring other alternatives.

21 There are legislative and regulatory activities around the
22 world the court is aware of. There's not -- they're not in
23 evidence, but I'm sure the court reads the papers. That Apple
24 is responding to.

25 One example -- and this is in the -- in the record with --

1 with the stay papers, Apple has agreed as part of an agreement
2 with the Japanese Fair Trade Commission to allow links in a
3 small set of apps, reader rule apps, a few hundred apps.

4 This will be the first time that Apple has ever allowed
5 live links in an app for digital content. It's going to take
6 months to figure out the engineering, economic, business and
7 other issues. They won't even go into place until next spring
8 sometime, sometime in the first quarter of 2022.

9 It is exceedingly complicated. There have to be guard
10 rails and guidelines to protect children, to protect
11 developers, to protect consumers, to protect Apple. And they
12 have to be written into guidelines that can be explained and
13 enforced and applied.

14 And it's -- you know, we have experience with this.
15 We're -- we're watching it. Out-of-app communications were
16 different. We could -- we could remove that paragraph from
17 the guideline. Developers can do whatever they want out of
18 the app.

19 **THE COURT:** The problem is, Mr. Perry, you haven't
20 asked for additional time. You've asked for an injunction,
21 which would effectively take years.

22 **MR. PERRY:** Well, Your Honor, we've asked for the --
23 the injunction which would change the status quo to be held in
24 abeyance until the appeal is resolved because --

25 **THE COURT:** Which is -- which is years.

1 **MR. PERRY:** Well, it is --

2 **THE COURT:** You did not ask for a few months. You
3 didn't ask for six months. You didn't ask for a limited
4 amount of time. You asked for a -- an across-the-board stay,
5 which could take three, four, five years. That's what you
6 asked for.

7 **MR. PERRY:** Yes, Your Honor. And -- let me be clear.

8 We believe that, you know, these changes, if -- if Apple
9 is forced to implement them will upset the platform. They
10 will harm consumers. They will harm developers. That is a
11 fact. It is going to happen.

12 And we are asking -- Mr. Kosmynka testifies to that, and
13 we think the trial evidence supports that. Mr. Schiller's
14 testimony supports that. We are asking for a stay for the
15 appeal. We're going to win the appeal. Neither of you have
16 to agree with me on that, but we're going to try.

17 We certainly have serious issues in the appeal. You know,
18 no court has ever struck down steering provisions as
19 anti-competitive that we're aware of, and certainly Epic has
20 never cited any. The Supreme Court upheld them.

21 Again, I don't want --

22 **THE COURT:** -- was an entirely different case, and I
23 explained that.

24 Mr. Bornstein, any response?

25 **MR. BORNSTEIN:** Yes, Your Honor. I'll -- I'll be

1 brief on just two points.

2 The first one is -- although I could walk through the
3 series of five or six things that Mr. Perry went through, I
4 think there's a common theme that runs through all of them
5 that I can try to address together, which is each and every
6 one of the harms that he identifies -- or supposed harms that
7 he identifies and Mr. Kosmynka identifies, are harms that
8 would, if, in fact, harm at all, flow from consumers making a
9 choice with the benefit of additional information -- making a
10 choice to pursue an avenue that is already available right
11 now.

12 During the trial, Apple repeatedly said that it competed
13 against transactions that happened on the web. It -- having
14 described this as competition during the trial, it can't now
15 claim to be irreparably harmed by the fact that people might
16 be more aware and be better able to take advantage of that
17 competitive alternative. That is not irreparable harm under
18 the law. And I think that covers a long list of things.

19 The other point I would just make, Your Honor, is about
20 the idea that Apple should be trusted to -- to sort this out
21 on its own.

22 It's very telling that in their papers, the only things
23 that they point to as steps that they have taken are in
24 response to the developer class action, in response to the
25 Japanese law enforcement action. And even today, Mr. Perry

1 referred only to legislative and regulatory developments.

2 There is no evidence -- and to the contrary, Your Honor
3 has found that Apple does nothing unless it is forced to do
4 it, to reconsider its restrictions or pricing on the App
5 Store.

6 And as just one example -- well, two -- two points about
7 that. One, they don't even promise to get it done in the
8 brief, Your Honor. What they say is that what they're doing
9 may solve the court's concerns. That's page 1 of their brief.
10 And it could obviate the need for the injunction. That's page
11 3 and, again, on page 7. No promise even that they'll get it
12 done. Just maybe we should wait for years.

13 And that -- the last thing I'll say, Your Honor, is just
14 with this idea that they have already addressed the second
15 half of the injunction. I would urge Your Honor to take a
16 look at Exhibit A to Mr. Perry's reply declaration. We didn't
17 get a chance to comment on this in the papers 'cause it came
18 in the reply.

19 But Your Honor will see the last provision there, 5.1.1X,
20 what that provision does is it takes away with one hand what
21 Apple purports to be giving with the other. While it says
22 that developers can now reach out and contact users through
23 email, what that new provision does is it restricts the
24 circumstances in which developers are allowed to get that
25 email from users in the first place.

1 So even when they are purporting to comply with the
2 injunction, they are playing games, Your Honor.

3 **THE COURT:** Any response, Mr. Perry.

4 **MR. PERRY:** Two points very briefly if I may, Your
5 Honor.

6 5.1.1 says that users have to consent. We think that's a
7 principle that everybody should agree to. And it is certainly
8 one that Apple holds dear and that Apple will enforce in all
9 of its proceedings.

10 Apple does not do -- and, second, Apple does many things
11 not under regulation, including many things relate to consumer
12 information. The nutrition privacy labels, which was a major
13 Apple initiative, has nothing to do with litigation or
14 regulation or anything else.

15 It was around initiative undertaken by Apple, and it's now
16 under fire from its competitors to provider greater
17 information to consumers. We are in favor of consumer
18 information. Apple is committed to providing more information
19 to consumers. Your Honor, it is not going to take us three to
20 five years to get this done. It is going to take us six
21 months to a year, but there are many moving pieces.

22 This is a -- a very much difficult juggling act on the
23 world stage. And incremental approach is important because it
24 allows testing in the real world before the next step is made.

25 The JFTC settlement is going to give us for the first time

1 real data on how links work in real apps to digital content.

2 The *Cameron* settlement, which went into effect two weeks
3 ago, on the target out-of-apps communication. Will give us
4 real data on both sides, by the way, for developers, for
5 consumers, for Apple, for competitors on whether that change
6 is sufficient. We don't yet know whether it is or not because
7 it is being implemented.

8 We are committed to making changes. I -- I want to be
9 clear about that. The paper says "may" because we don't know
10 exactly what they are. It's an incredibly complicated
11 problem, Your Honor.

12 It is not simply a matter of striking a sentence from the
13 guideline. We can do that of course. We can do that today.
14 The question is what do we replace it with. What app review
15 rules and policies can be put in place to protect children and
16 other consumers, that protect developers, that protect the
17 ecosystem.

18 Simply striking that sentence of the guideline doesn't do
19 that. That creates havoc. That creates the harms that
20 Mr. Kosmynka has testified to.

21 **THE COURT:** Third --

22 **MR. BORNSTEIN:** Your Honor? Oh.

23 **THE COURT:** Oh. Go ahead, Mr. Bornstein.

24 **MR. BORNSTEIN:** I was -- I was just going to say,
25 I -- I urge Your Honor to read 5.1.1X. It is not just a

1 consent provision. What it does is it says that a developer
2 may not make the provision of features and other services on
3 the app conditional on getting email from the user. There's
4 no consent issue in terms of whether or not a developer can
5 take the email without consent.

6 What it says is you can't have an app where you have to
7 sign up with an email that -- in order to get the services.
8 That's not permitted anymore under the rules. That is a
9 substantial limitation on developers' ability to develop a
10 direct relationship with their users.

11 I realize that's not in front of the court right now.
12 It's not part of the -- of the matters that's been briefed. I
13 just use it as an illustration of the way in which Apple is
14 attempting to thread the needle as they purport to comply.

15 **THE COURT:** All right.

16 Third factor, injury to other parties interested in the
17 proceedings.

18 **MR. PERRY:** Your Honor, we have a single plaintiff
19 case. Epic chose to opt out of the developer class action.
20 At the time this action was filed, the court had pending
21 before it two actions, a consumer class action and a developer
22 class action. The consumer class action did not and does not
23 challenge steering, so the consumers don't challenge steering
24 at all.

25 The developers had a steering challenge. Before the Epic

1 decision was rendered, we went to settlement negotiations and
2 reached an agreement with them that expressly draws the same
3 line that we are urging in this motion between out-of-app
4 communications on the one hand, allowing that, and in-app
5 communications and -- and mechanisms on the other hand,
6 maintaining the prohibition against that.

7 Ninety-nine percent of the developers of paid apps agreed
8 to that restriction. They agreed that that is consistent with
9 their business models and it is acceptable.

10 The court, once the preliminary approval order issues,
11 we'll hear from, you know, objectors and whether or not that's
12 the case. But that is real-world evidence that the developer
13 community views this very distinction between out-of-app and
14 in-app the same way we do. There are different things. What
15 happens outside the app is the developer business. What
16 happens inside the app is the shared business of Apple
17 consumers and developers. And we urge the court that that
18 distinction is there.

19 So Epic opted out. Epic brought this case. We went to
20 trial. Epic proved no harm to itself. Epic proved no harm to
21 its subsidiary. Epic proved no harm to its licensees. Epic,
22 you know, had the chance and didn't do it. So if they are
23 not -- since they have not proved harm from the steering
24 provisions to Epic in the first place, they certainly could
25 not prove harm to Epic from the stay we are requesting pending

1 appeal.

2 Because, you know, in addition to being off the store,
3 they can't have -- harmed at all, they never did prove harm in
4 the first place, so we think that third factor clearly weighs
5 in favor of a stay, Your Honor.

6 **THE COURT:** Mr. Bornstein.

7 **MR. BORNSTEIN:** Yes, Your Honor.

8 This really treads ground I think we've already covered.
9 The harm to Epic comes from the supercompetitive commissions
10 that flowed from the anti-steering provisions, which Your
11 Honor has addressed at great length in the opinion.

12 And we think the trial record adequately supports -- more
13 than adequately supports that conclusion. And as to whether
14 or not the developer community has signed on to the
15 distinction that Mr. Perry is articulating, three
16 observations.

17 The first is that settlement has yet to be -- had its
18 tires kicked with the developer community. That is what the
19 notice and objection process is for. At this point in time,
20 it's just the named plaintiff developers who have agreed with
21 that distinction.

22 Second, it is, of course, a settlement. A settlement is a
23 compromise. It's what they were able to attain in their
24 negotiations with Apple. It is by no means a reflection of
25 what they believe to be appropriate final relief had they

1 litigated the case.

2 And third, as to the repeated statement that Epic opted
3 out of the developer class, I should just point out. Epic is
4 not a member of the class that is purported to be certified.

5 **THE COURT:** Well, it was a member of the class that
6 was defined in the consolidated complaint.

7 (Simultaneous colloquy.)

8 **THE COURT:** It did, in fact, opt out of that.

9 **MR. BORNSTEIN:** That -- that is correct, Your Honor.
10 And I don't mean in any way to suggest that -- that Epic is
11 intending to try to participate in the developer class. But
12 in terms of assessing Epic's position here and its ability to
13 assert its own rights, it is at this point in time not in any
14 way bound by the class settlement.

15 **THE COURT:** Okay.

16 And then finally, public interest, which in many ways, in
17 my view, overlaps with everything that's already been
18 discussed, but if there's something new --

19 Mr. Perry?

20 **MR. PERRY:** Your Honor, no. We -- we think it does
21 rap up all of these considerations, including -- and I'm just
22 going to say the word "global solution" one more time.

23 Apple is trying to keep a unified store front. You know,
24 we have 200 store fronts across all these countries with a
25 billion users, with very minor exceptions, Apple has been able

1 to keep the same rules for developers and consumers across
2 those store fronts.

3 This issue threatens to fracture that. Apple is trying
4 hard to find a uniform global solution. It is going to take
5 more time than between now and December 9th to do that.
6 That's just reality.

7 Now, we asked for a full stay. I mean -- and -- and I'm
8 not going to change that request, Your Honor, but the truth is
9 we'll know more in six months. We'll know more in a year. We
10 may be done in six months or a year. I can only say that
11 because Mr. Kosmynka tells me they're working on it.

12 **THE COURT:** Mr. Bornstein?

13 **MR. BORNSTEIN:** Your Honor found at page 166 of your
14 opinion that this injunction would further the public interest
15 already. It will come as no surprise to anyone on the Zoom
16 platform right now that Epic agrees with that conclusion and
17 the basis on which it was reached.

18 **THE COURT:** Okay.

19 Like I said, I'll get something out very quickly here in
20 writing. And I don't know. Will I see you, Mr. Perry, in two
21 weeks? Who will I be seeing for that argument?

22 I mean, I see you guys, you know, at least -- these days,
23 I'm seeing you every week. I really did need a break from you
24 all to rest and get some other work done. You know, I have a
25 few other cases other than the Apple cases, but --

1 **MR. PERRY:** I think after next week, you're quit of
2 us for a while, Your Honor, and we'll try to get some new --
3 new faces on the Zoom platform for you as well.

4 We -- we, like our friends on the other side, have a -- a
5 great team and look forward to discussing additional issues.

6 **THE COURT:** All right.

7 Taken under submission. You'll hear from me in writing.

8 We're adjourned.

9 **MR. BORNSTEIN:** Thank you, Your Honor.

10 (Proceedings were concluded at 2:27 P.M.)

11 --oo--

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14 **CERTIFICATE OF REPORTER**

15
16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.
18 I further certify that I am neither counsel for, related to,
19 nor employed by any of the parties to the action in which this
20 hearing was taken, and further that I am not financially nor
21 otherwise interested in the outcome of the action.

22
23 
24 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

25 Wednesday, November 17, 2021

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228